U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

OCT 20 2005

Mr. Paul Grady
Senior Vice President of Sales and Operations
AmeriGas Propane, L.P.
460 North Guph Road
King of Prussia, PA 19406

Re: CPF No. 57702

Dear Mr. Grady:

Enclosed is the decision on the petition for reconsideration filed on your behalf by Bryan Cave LLP in the above-referenced matter. The Associate Administrator for Pipeline Safety has denied the petition. Accordingly, payment of the $260,000 civil penalty is due immediately. The penalty payment terms are set forth in the enclosed decision. Your receipt of the enclosed document constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

cc: Barton D. Day
Bryan Cave LLP

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590

In the Matter of	)	
	)	
AmeriGas Propane, L.P.	)	**CPF No. 57702**
	)	
Respondent.	)	
	)	

DECISION ON PETITION FOR RECONSIDERATION

Background

On January 24, 1994, this enforcement action began when a representative of the Research and Special Programs Administration's[1] Office of Pipeline Safety (RSPA/OPS) initiated an investigation of AmeriGas Propane, L.P.'s (Petitioner's) incident report of a November 30, 1993 gas release in Truckee, California. The Truckee incident involved a propane gas explosion in which the Masonic Building in the Truckee business district partially collapsed resulting in one death, eight personal injuries, and extensive property damage. As a result of the investigation, by letter dated February 6, 1997, RSPA/OPS issued a Notice of Probable Violation and Proposed Civil Penalty (Notice) which proposed finding that Petitioner had committed violations of 49 C.F.R. Parts 191 and 192, and proposed assessing civil penalties totaling $260,000 for the alleged violations.

By letter dated May 20, 1997, Petitioner contested the allegations of violation and requested a hearing (Response 1). By letter dated October 10, 1997, Petitioner submitted additional documents and information (Response 2). The hearing was held in Lakewood, Colorado on October 15, 1997. Petitioner submitted additional documents and information for the record on November 14, 1997 (Response 3) and on February 2, 1998 (Response 4). On December 31, 2001, RSPA/OPS issued a Final Order in this case finding that Petitioner violated 49 C.F.R. § 191.5 by failing to timely provide telephonic notice of the Truckee incident to the National Response Center and assessed a civil penalty of $10,000 for this violation (Item 1). The Final Order further found that Petitioner violated 49 C.F.R. § 192.145(a) by failing to ensure that the ball valve which failed and caused the gas leak involved in the explosion met the minimum requirements for the operating conditions under which the valve was used and assessed a civil penalty of $250,000 for this violation (Item 2).

[1] Pursuant to the Mineta Research and Special Programs Improvement Act (Pub. L. No. 108-326; Nov. 30, 2004), the pipeline safety activities of the Department were transferred to the newly created Pipeline and Hazardous Materials Safety Administration. The Act provides that the transfer does not affect the validity of orders or the nature of proceedings.

By letter dated January 30, 2002, as supplemented by letter dated March 26, 2002, Petitioner filed a petition for reconsideration (Petition) of the December 31, 2001 Final Order. Specifically, Petitioner requested reconsideration of the penalty amounts assessed in the Final Order for both violations.

Discussion

1. Telephonic Report

With respect to the telephonic reporting violation, the gas explosion occurred at approximately 2:00 P.M. PST on November 30, 1997 and Petitioner acknowledged that it did not contact the National Response Center until the next day, December 1, 1993 at 8:03 A.M. PST, approximately 18 hours after it became aware that the explosion had occurred. 49 C.F.R. § 191.5 requires gas pipeline operators, at the earliest practicable moment following discovery, to notify the 24-hour National Response Center of the occurrence of an incident involving the release of gas. An incident is defined by 49 C.F.R. § 191.3 as:

> (1) An event that involves a release of gas from a pipeline or of liquefied natural gas or gas from an LNG facility and
>
> > (I) A death or personal injury necessitating in-patient hospitalization; or
> >
> > (ii) Estimated property damage, including cost of gas lost, of the operator or others, or both, of $50,000 or more.
>
> (2) An event that results in the emergency shutdown of an LNG facility; or
>
> (3) An event that is significant, in the judgment of the operator, even though it did not meet the criteria of paragraphs (1) or (2).

The fact that the Truckee explosion involved a release of gas, one death and eight personal injuries, and over $50,000 in property damage was never in dispute. Therefore, the only issue is whether, under the circumstances, Petitioner was justified in delaying the reporting for 18 hours to an extent that would warrant a reduction in the penalty amount already assessed in the December 31, 2001 Final Order.

RSPA/OPS has historically construed the telephonic incident reporting regulations to require a gas release meeting the reporting criteria to be reported within one to two hours after the pipeline operator first becomes aware of its occurrence. This includes release incidents ostensibly meeting the reporting threshold where the nature of the incident is such that definitive information confirming that the reporting threshold was met is not yet available. For example, an operator may not delay a telephonic incident report based on the amount of time it takes to investigate the cause of a gas release, to ascertain the volume of gas released, or to calculate the actual dollar amount of any

property damage.[2] This longstanding policy has direct public safety benefits including facilitating the rapid involvement of transportation safety authorities during hazardous situations, and is not overly burdensome to pipeline operators because only the most basic and essential information is collected during the initial telephonic notification. After a gas release incident is fully investigated, the operator is expected to submit more detailed information concerning the nature, cause, and consequential damage in a subsequent written incident report. If an operator ultimately determines that a telephonically reported release did not meet the reporting criteria, the operator can contact RSPA/OPS and have its telephonic report nullified. All pipeline operators were notified of the two-hour time frame for telephonic incident reporting through an Alert Notice issued on April 15, 1991 (ALN-91-01). ALN-91-01 provided pipeline operators with explicit guidance on the manner in which telephonic reporting requirements would be enforced.

Petitioner contends that the civil penalty of $10,000 assessed in the Final Order for this violation is excessive because although the Truckee explosion was recognized from the beginning to be a gas explosion due to its force, uncertainty existed at the time as to whether or not the gas leak was from Petitioner's underground pipeline (which supplied the Masonic Building with gas). Petitioner asserts that based on its own experience, accidental explosions resulting from gas leakage are frequently caused by damage to indoor lines or equipment arising from indoor activity such as renovation work. Petitioner contends that its failure to timely report the Truckee explosion is defensible to some degree because, at the time the explosion occurred, it was at least conceivable that the gas leak originated from customer equipment located inside the Masonic Building as opposed to its pipeline.[3] Petitioner's argument amounts to the proposition that in the event of a gas explosion, telephonic notice need not be given at the time the gas company learns of the explosion, but instead may be delayed until the source of the gas leak can be traced to a company owned or operated line. In order to maintain an adequate margin of public safety, however, we cannot accept this proposition.

A gas release in a populated area, particularly one resulting in an explosion or fire, that occurs along a gas pipeline constitutes a potentially hazardous situation in which gas pipeline operators must err on the side of caution and are obligated to make conservative safety and compliance decisions, including decisions about incident reporting, in order to provide an adequate margin of public safety. Accordingly, any gas release resulting in an explosion or other potentially hazardous situation that occurs along a gas pipeline must be presumed to involve the pipeline for purposes of the initial telephonic incident report and if it meets the relevant criteria, must be reported when the pipeline operator first becomes aware of the situation unless there is reliable information from the scene giving it reason to believe that the gas leakage was from a source other than the pipeline. Because the vast majority of pipelines are buried underground, a pipeline operator will rarely have enough reliable information in the first two hours after a gas explosion occurs along its pipeline to be able to definitively conclude that its pipeline was not involved. Therefore, an operator who decides not to timely report such an explosion risks being found in violation of the telephonic reporting requirements if it turns out that its pipeline was involved.

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[2] The fact that most pipelines are underground facilities means that extensive excavation work is often necessary before such determinations can be made.

[3] The meter is considered to be the boundary between the operator's pipeline system and the customer's equipment.

In this case, to the extent Petitioner believed the gas leakage was from a source other than its underground pipeline, Petitioner turned out to be wrong. Due to its well understood physical properties, gas that leaks from a buried pipeline can migrate underground and accumulate in the basements of nearby buildings–which is what happened in this case.[4] In its Petition, Petitioner attempts to justify its erroneous judgment that the Truckee explosion was likely caused by an indoor release of gas by making a generic observation that gas explosions are often caused by damage to lines or equipment inside of the building. Petitioner, however, failed to present any relevant facts or evidence from the scene that would have provided a basis for such a conclusion in this case (*e.g.*, evidence that someone had begun to install new gas appliances inside the Masonic Building just before the explosion). We recognize that Petitioner's diligence in this regard is not at issue because Petitioner's opportunity to immediately examine the site to ascertain whether or not any such evidence was present was limited by the local Fire Marshal in the hours after the explosion. However, this does not negate Petitioner's responsibility to base an important compliance decision such as whether to contravene the two-hour requirement for reporting a gas release on the presence of reliable information–not its absence. We have carefully reviewed the record in this proceeding and Petitioner has not presented any evidence that it could have rightfully relied on at the time to establish that the gas leak that caused the explosion was from a source other than the pipeline.[5] Since public safety considerations dictate that mere uncertainty as to the source of a gas leak is not enough to overcome the presumption that gas explosions along a gas pipeline meeting the reporting criteria are to be timely reported by the gas pipeline operator, Petitioner did not have sufficient grounds to delay reporting the Truckee incident.

We further note that under paragraph (3) of the definition of an incident in § 191.3, even when a given release does not meet the reporting threshold, pipeline operators are obligated to make a further judgment as to whether the event is nevertheless significant enough to warrant reporting. In general, gas pipeline operators should consider any unintended release of gas in a populated area that causes the operator to shut down a pipeline for immediate repair to be significant enough to warrant reporting. The Truckee release occurred in a Class 4 area and Petitioner's line was shut down within one hour.[6] More importantly, Petitioner would have had to make the judgment that this incident, which involved an explosion and resulted in death, serious injury, and extensive property damage,

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[4] See *e.g.*, NTSB Report No. PAB-00-01 (Adopted Nov. 28, 2000) (finding that gas pipeline leak response activities should account for potential gas accumulation in nearby buildings due to underground migration of gas).

[5] The information available to Petitioner actually went in the opposite direction. Petitioner had knowledge that it had performed a temporary repair on the pipeline in the immediate vicinity of the Masonic Building only five months earlier and had never upgraded it to a permanent repair. Petitioner does state that as a result of the ensuing investigation, it learned that some painting or other renovation-related work had been done to some portion of the Masonic Building at some time prior to the incident but is vague on how significant the work was and fails to indicate whether it occurred in the vicinity of the propane gas supply, whether it was commenced immediately before the explosion, or other such information as might permit an assessment of its significance. We note that even if this information were relevant, Petitioner does not claim that it became aware of it in the first two hours or that this information was specific enough to justify reliance on it.

[6] Response 3 at page 1.

was not significant. Based on the severe consequences alone, however, such a judgment would not have been appropriate. Under the totality of the circumstances, Petitioner should have made the judgment that this gas explosion was significant enough to warrant timely reporting.

Petitioner also argues that no harm was done by the delay in reporting given the eventual notification it made on December 1, 1993. To the contrary, timely reporting of a release incident is crucial to the ability of government officials to properly coordinate emergency response activities and investigate pipeline failures. Once a report is made, investigators must determine at the outset whether a full-scale investigation is necessary and must be present to ensure that any evidence is properly collected, sealed, and handled under controlled custody. Any failure to report promptly hinders this process and could jeopardize the outcome of any subsequent investigation.

Finally, we note that Petitioner has previously been warned for late telephonic incident reporting. On March 1, 1993, Petitioner was issued a Warning Letter for failing to provide timely notice following its discovery of a propane gas release in Chester, California.[7]

Accordingly, having reconsidered the penalty in light of the assessment criteria in 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I do not find that Petitioner's arguments warrant a reduction in the penalty amount of $10,000 assessed for this violation in the December 31, 2001 Final Order.

2. Noncompliant Valve

With respect to the violation for improper valve usage, the ball valve that fractured and resulted in the Truckee explosion was designed for indoor use at temperatures above 32° Fahrenheit, and Petitioner acknowledged that it used the valve in an outdoor application where temperatures routinely drop below 32° Fahrenheit, and buried the valve directly in the soil.

49 C.F.R. Part 192 incorporates by reference numerous industry standards and codes which are established by a consensus of subject matter experts and approved by recognized bodies. Adherence to these standards ensures that materials, equipment, and processes are fit for their purpose. API standards are published as aids to the procurement of standardized equipment and materials used in petroleum-related industries. API 6D is recognized worldwide as the standard for pipeline valve specifications. Once a standard is incorporated by reference into the C.F.R., it is adopted as part of the regulatory framework and becomes enforceable by law. When procuring valves or other materials for use in underground gas pipeline systems, operators must ensure that all materials conform with applicable standards and are recommended by the manufacturer for underground gas pipeline use in order to be sure that all of the component parts of the valve are suitable for the operating conditions under which the valve will be used.[8] 49 C.F.R. § 192.145(a) requires that:

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[7] CPF No. 53003-W.

[8] For example, all materials used in pipeline valves for propane systems, including valve seat discs, packing, seals and diaphragms, must be resistant to the action of propane gas under service conditions.

> Except for cast iron and plastic valves, each valve must meet the minimum requirements, or equivalent, of API 6D. A valve may not be used under operating conditions that exceed the applicable pressure-temperature ratings contained in those requirements.

The fact that the brass ball valve Petitioner installed did not meet the minimum pressure-temperature ratings of API 6D or equivalent for the operating conditions under which it was used was never in dispute. Therefore, the only issue is whether, under the circumstances, Petitioner's use of the noncompliant valve was justified to an extent that would warrant a reduction in the penalty amount already assessed in the December 31, 2001 Final Order.

Petitioner contends that the civil penalty of $250,000 assessed in the Final Order for this violation is excessive because although the valve did not comply with the regulatory standards, it "was not a case of conscious noncompliance" on the part of the employee who installed it. Petitioner asserts that the noncompliant valve had markings indicating that it was appropriate for "gas use" and contends that given its markings and the fact that no literature was included, it was "surprising" that the valve had any significant technical or regulatory use limitations. These arguments, however, are not persuasive.

The maintenance of gas lines and the repair of gas leaks are highly specialized and potentially hazardous operations. Operators are responsible for ensuring that their employees who perform gas leak repairs are properly trained and qualified. Operators are obligated to know which materials and components are qualified for use in their systems' pipes, valves, fittings, flanges, and regulators, and should maintain a list of qualified materials for construction and repair of the system that is accessible to their employees. In addition, operators must maintain equipment manufacturers' manuals, which include installation, operation, repair, and maintenance procedures, for each type of component in their gas systems. These equipment manuals and repair procedures, along with the applicable codes and standards, must be incorporated or referenced in the operations, maintenance and emergencies (OM&E) manual required by 49 C.F.R. § 192.605. Operators are required under § 192.605 to follow their own procedures and are obligated to exercise control over the installation of equipment on their systems in a thorough and consistent manner.

According to the record in this proceeding, Petitioner purchased this valve over the counter at a local supply store, not an equipment provider familiar with gas pipeline systems. With respect to the markings on the valve, Petitioner is correct that in general, markings on a component help identify whether the material is qualified for its intended use. For example, an API 6D monogrammed valve is manufactured, inspected, tested, and documented in accordance with the minimum requirements of API 6D. The absence of this monogram means that a valve is not necessarily manufactured to API 6D specifications and triggers an obligation on the part of an operator to further inquire into whether the valve meets the minimum pressure-temperature ratings of API 6D for the relevant operating conditions at the repair site. In this case, despite the absence of appropriate markings on the valve or documentation in the valve packaging, Petitioner failed to take any further steps to ascertain whether the valve met the minimum requirements and proceeded to use it in an underground application in a Class 4 area. Moreover, appropriate marking of a component is itself

a requirement of many codes and standards including API 6D.[9] Therefore, far from excusing the use of a noncompliant valve, the absence of appropriate markings reinforces the need to use compliant valves manufactured in accordance with API 6D.[10] More importantly, there is reason to believe that at the time the noncompliant valve was installed, Petitioner's personnel anticipated that it was only being used for a temporary repair.[11] Presumably, this means that the materials suitable for a permanent repair were not immediately available. Petitioner, however, despite knowing that only a temporary repair had been performed, subsequently failed to ensure that a permanent repair was performed once the materials suitable for a permanent repair became available. The failure to upgrade a temporary repair to a permanent repair is not appropriate conduct for any pipeline operator.

Petitioner also argues that the severe consequences associated with the violation provide "no justification" for the penalty amount assessed because it claims that the cause of the failure was "a latent manufacturing defect" and not the fact that the valve was used under operating conditions that exceeded its design capacity. This argument, however, is without merit. The susceptibility of a component to a failure involving a latent manufacturing defect can be heavily influenced by the conditions under which it is used. The cause of this particular failure, "stress corrosion cracking," occurs when both static stresses and a corrosive environment are present. Even the metallurgist retained by Petitioner cited factors associated with the underground environment in his analysis of the failure.[12] Notably, stress corrosion cracking is a time-dependent failure, meaning that the longer the time the affected component is exposed to that environment, the greater the chance that it will ultimately fail. Burying this un-monogrammed brass valve of unknown pressure-temperature rating directly in soil would have only heightened its susceptibility to any latent defects that may have been present.[13] Therefore, there was no technical justification for the use of this noncompliant valve regardless of the degree to which a manufacturing defect may have shortened its "time to failure." Moreover, consistently using equipment manufactured to applicable industry standards minimizes the potential for failures involving manufacturing defects. Part of the API 6D standard, for example, involves quality control requirements including the accuracy of dimensional measurements and calibrations associated with the component manufacturing process.[14] Therefore, to say that the noncompliant valve also had a manufacturing defect because its dimensional measurements deviated

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[9] API Specification 6D, 21st Edition, March 31, 1994, Section 6: Marking.

[10] Petitioner also states that no documentation was packaged with the valve. Again, the furnishing of instructions with equipment is itself a matter addressed by API 6D.

[11] Pipeline Failure Investigation Report, Jan. 7, 1997, Attachment No. 1, ¶ 2.

[12] Response 2 at Tab F pages 3-4.

[13] Directly burying this type of valve in the ground is also a violation of 49 C.F.R. § 192.365(c) which requires that "Each underground service-line valve must be located in a covered durable curb box or standpipe that allows ready operation of the valve and is supported independently of the service lines."

[14] API Specification 6D, 21st Edition, March 31, 1994, Section 7: Quality Control Requirements.

from the intended design, rather than excusing the use of a noncompliant valve, reinforces the need to use compliant valves manufactured in accordance with API 6D and subject to its quality control requirements.

I acknowledge that Petitioner took action to rectify the situation. It hired a new Director of Safety and Region Safety Managers and made substantial improvements to its operations and maintenance manual. It also enhanced the annual safety training it provides to its personnel. However, these actions were taken into consideration when the penalty amount was assessed in the Final Order. Accordingly, having reconsidered the penalty in light of the assessment criteria in 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I do not find that Petitioner's arguments warrant a reduction in the penalty amount of $250,000 assessed for this violation in the December 31, 2001 Final Order.

Accordingly, having reviewed the record and reconsidered the assessment criteria, I assess Respondent a total civil penalty of $260,000 for both violations.

PAYMENT OF PENALTY

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment be made by wire transfer, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the $260,000 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a United States District Court.

This Decision on Petition for Reconsideration is the final administrative action in this proceeding.

Stacey Gerard
Associate Administrator
for Pipeline Safety

OCT 20 2005
Date Issued